

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

ATLANTIC UNION RESOURCES, INC.

and

Case GR-7-CA-48067

ERIC SODERMAN, an Individual

Steven E. Carlson, Esq., for the General Counsel.
William W. Nexsen, Esq. (Stackhouse, Smith & Nexsen),
of Norfolk, Virginia, for the Respondent.

DECISION

Statement of the Case

JOHN T. CLARK, Administrative Law Judge. This case was tried in Grand Rapids, Michigan, on February 17, 2005. The charge was filed November 9, 2004,¹ and the complaint issued December 27. An amended complaint issued on January 25, 2005. The complaint alleges that Atlantic Union Resources, Inc., (the Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by laying off and failing to rehire Eric Soderman, the Charging Party, because he concertedly raised safety concerns regarding the operation of certain equipment used by the Respondent at the Palisades Nuclear Plant jobsite. The Respondent admits that it laid off and did not rehire Soderman, but denies that it violated the Act. The parties have been afforded a full opportunity to appear, present evidence, examine and cross-examine witnesses, and file post hearing briefs.

On the entire record, including my observation of the demeanor of the witnesses, as well as my credibility determinations based on the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole and, after considering the briefs filed by the counsel for the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with its principal office and place of business in Norfolk, Virginia, is engaged in the business of providing temporary employment services. During the 12-month period ending December 27, 2004, the Respondent in conducting its business operations described above, performed services in the State of Michigan valued in excess of \$50,000 for Nuclear Management Company, at the Palisades Nuclear Plant located in Covert, Michigan (the facility). The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

¹ All dates are in 2004 unless otherwise indicated.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

5 The Palisades Nuclear Plant in Covert, Michigan, is operated by the Nuclear Management Company. During the summer and fall of 2004 the Respondent was installing security modification upgrades in various buildings on the premises.

10 Soderman is a journeyman ironworker and a member of Local 340, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (the Union). In June he was referred by the Union to work for the Respondent at the Palisades plant. Because the facility is a nuclear plant Soderman, like all workers on the site, had to successfully undergo an extensive background investigation in order to obtain the prerequisite security clearance. The investigation took approximately two weeks and Soderman began working in the plant around
15 early July. In addition to ironworkers, and employees of the Nuclear Management Company, workers from other trades such as carpenters, laborers, and operators also worked at the facility.

20 In the course of his duties Soderman had to work on a scaffold that was approximately 60-feet above the ground. Soderman noticed that the scaffold had a rating of "Two-Man/500 pounds." Notwithstanding this rating Soderman and his co-workers observed as many as eight workers, with equipment, on the scaffold at the same time. Soderman believed that the scaffold was close to its fail rate and he, and other ironworkers, shared their concerns among themselves and with workers in the other trades.

B. Soderman's Protected Concerted Activity

25 The Respondent conducts twice-daily meetings. The first, "pre-job briefs" at the start of the shift at 7 a.m., and the second, "D-15 meeting," held after lunch. Attendance is mandatory
30 for all employees and supervisors, unless their presence is required elsewhere. At these meetings the Respondent's superintendents routinely ask the employees if they have any safety concerns. Beginning in early July various ironworkers spoke out about "a major disregard for the weight capacities of the scaffold" (Tr. 22). Soderman either initiated the complaint or immediately became involved in the issue. He spoke frequently with his coworkers. A fellow
35 employee, Martin Schabes, credibly testified that he "let Eric speak for me" (Tr. 90) at the D-15 meetings. During the D-15 meetings Soderman spoke repeatedly, and often at length, about the employees' safety concerns regarding the weight bearing capacity of the scaffold. At one meeting Superintendent Ben Rogers opined that Soderman's mouth should be duct taped. After another, Superintendent Mike Williams asked ironworker Rick Forward to talk to Soderman
40 about toning down his comments.

45 In mid-July Soderman was reassigned to the fabrication shop by Superintendent Williams, who also eventually selected Soderman for layoff. Soderman believed that the reassignment was in retaliation for speaking out on the scaffolding issue and was precursory to being laid off. At the D-15 meeting after his reassignment Soderman voiced his belief. He told those assembled that they "should know if they bring up safety concerns to the point of it becoming an inconvenience, that it will be their jobs on the line (Tr. 31). General Superintendent Dan Tessin and Superintendents Williams and Rogers were present when Soderman made this statement. Shortly after the meeting Soderman and a group of co
50 employees remained in order to ascertain if Soderman was going to be laid off. Soderman eventually expressed his concern directly to Williams, who assured him, "that wasn't true" (Tr. 192).

Not being satisfied with the lack of action on behalf of the Respondent Soderman sought the advice of Forward who had worked at the facility for a number of years. Forward suggested that Soderman contact a Nuclear Management Company safety representative whose first name was Karen (Soderman could not recall her last name, but it is probably Ridley [Tr. 166]).

5 Soderman contacted her and she said that she would look into it. About a week later, John Kristi, the project manager for the Nuclear Management Company attended a D-15 meeting. Soderman once again raised his concerns about the scaffold. This time General Superintendent Tessin, after stating that this was the first time he heard of this problem, shut the job down. Thereafter, the scaffolding was inspected and the employees were provided with
10 information from the manufacturer regarding weight restrictions. After reviewing the information Soderman and his coworkers were satisfied that the scaffolding was not being stressed to the point of failure and the issue was resolved.

The foregoing findings are based on the credible testimony of Soderman, who was an
15 articulate and forceful witness. Much of his testimony about the events is corroborated by the credible testimony of employees Schabes and Forward. Some testimony is undisputed. The Respondent did not call Superintendent Rogers to refute Soderman's testimony concerning Rogers' duct tape statement. Superintendent Williams testified, but did not refute Forward's testimony that Williams asked him to talk to Soderman about toning down his comments
20 regarding the scaffolding. Williams admitted that Soderman talked with him about being laid off because he had voiced safety concerns. Although Williams stated that he thought that the safety concerns mentioned by Soderman related to heat, there is no evidence Soderman ever complained about heat. Regardless, Williams' testimony establishes that he knew of Soderman's safety concerns as early as July. Although General Superintendent Tessin stated
25 that he attended all the D-15 meetings and never heard Soderman speak about the scaffolding until August 5, his testimony on cross-examination is more limited. He states that Soderman was the only person's voice he remembers speaking about the scaffolding because "he was in close proximity to me (Tr. 151)." Soderman credibly testified that he spoke about the scaffolding on other occasions when Tessin was present. I find it plausible that on those occasions Tessin
30 was present, but because of distance may not have heard exactly what was said by Soderman.

C. Events Surrounding Soderman's Layoff

The parties agree that a "reduction in force" layoff is caused by a lack of work.
35 Soderman received such a layoff on August 26, about three weeks after the scaffold situation was resolved. The Respondent admits that there was no less work for Soderman, but that it had decided to transfer ironworkers from a project at the facility that was ending, to replace Soderman and coworker Gil Pelliter. Pelliter, unlike Soderman, was returned to work less than a week later and continued to work through December 2004.

40 Also around this time the Respondent's project manager, Ed Brouwer contacted Union Business Agent Hugh Coward. Typically, Brouwer calls and tells Coward the number of ironworkers, and their qualifications, that are needed for a project. Coward assembles the crew and sends the names to Brouwer. Brouwer stated that at a point in time subsequent to
45 Soderman's layoff Brouwer spoke with Coward and told him that "we were not happy with his [Soderman's] performance." Coward testified that he only recalled Brouwer saying that "there was going to be a reduction in force layoff" and "that Eric was dragging the safety meetings out," that "they had some issues with Eric over safety concerns and that basically Eric was driving him nuts, and he was going to be one of the guys that they were going to layoff." (Tr.73).
50 Brouwer denies saying anything about safety.

About a month later the Respondent requested 12 ironworkers. Coward included Soderman's name on the list that he sent to the Respondent because he knew that Soderman had previously obtained the necessary security clearance and thus could begin working immediately in the facility. Coward testified that shortly after the list was sent Brouwer called and said that he did not want Soderman back, that the "wound is too fresh (Tr. 79)." Brouwer states only that "I told Hugh that we did not want Eric to come back at that point (Tr. 162). It is undisputed that Soderman's layoff did not preclude him from further employment with the Respondent (Tr. 130, 153). Both Brouwer and Williams also testified that nothing about Soderman's prior performance prevented him from being rehired.

I find Coward more credible than Brouwer. Coward was an impressive witness whose testimony appeared to testify without bias. His testimonial demeanor was that of a forthright and truthful witness. I closely observed the testimony of Coward and Brouwer and it is obvious that they share a mutual respect and have formed, if not a professional friendship, at least a symbiotic relationship. Brouwer relies on Coward to provide the best qualified ironworkers, in the required numbers. Coward must satisfy Brouwer's staffing needs in order to provide his members with work. As correctly argued by the counsel for the General Counsel Brouwer had no direct knowledge of Soderman's work performance, he merely adopted Williams' recommendation. Contrary to the Respondent's contention, I find nothing unusual about Brouwer's candid statement to Coward admitting the real reason why Soderman was chosen from among all the available ironworkers, including those whose work was ending, for layoff. Nor is it unique that a witness admits in private that which he denies in public, and obviously would not have made, had there been even an inkling that the statement would be repeated for all to hear.

The Respondent also expresses dismay of Coward's inaction after learning the actual reason for Soderman's selection for layoff. The Respondent assumes facts not in evidence. There is no evidence of Coward's action or inaction after receiving Brouwer's phone calls. Had the Respondent believed that Coward's conduct, or lack thereof, was relevant it had ample opportunity to pursue the topic during cross-examination. Respondent also poses hypothetical questions apparently intended to detract from Coward's credibility. Although obvious answers are readily apparent, to address them now would be pure conjecture. If the answers were relevant to Coward's credibility, inquiry should have been made of Coward during cross-examination. Indeed, neither the conversations between Coward and Brouwer, nor between Coward and Soderman, if any, were made the subject of the Respondent's brief cross-examination of Coward. Additionally, Brouwer does not deny saying the "wound is too fresh" (Tr. 162-163), and absent the context of the prior conversation, as testified to by Coward, the phrase is meaningless.

Soderman was not rehired by the Respondent notwithstanding the fact that the number of ironworkers it employed at the Palisades facility increased three fold over the next several weeks.

III DISCUSSION

The General Counsel alleges that Soderman was unlawfully laid off and refused recall or rehire by the Respondent in retaliation for his protected concerted activity. An employer violates Section 8(a)(1) of the Act when it takes adverse action against an employee engaged in concerted activity (i.e., activity engaged with or on the authority of other employees and not solely on the employee's own behalf), the employer knew of the concerted nature of the employee's activity, the concerted activity was protected by the Act, and the adverse action was motivated by the employee's protected concerted activity. *Meyers Industries (Meyers I)*, 268

NLRB 493 (1984), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), reaffd. in *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), enfd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U. S. 1205 (1988).

5 There is substantial uncontradicted evidence that Soderman engaged in concerted activity with other employees. This activity included discussing the weight capacity of the scaffolding with other employees, two of whom, Schabes and Forward, corroborated, without contradiction Soderman's testimony that the issue was discussed among themselves on numerous occasions. Soderman, Schabes, and Forward each credibly testified that Soderman, speaking on behalf of himself and his fellow employees, addressed the weight capacity of the scaffolding at group safety meetings conducted by the Respondent. Soderman's activity was engaged in with other employees and not solely by or on behalf of himself and I find he was engaged in concerted activity. *Bergensons Property Services, Inc.*, 338 NLRB 883, 886 (2003). I find that it is also equally undisputed, and well-settled, that raising safety concerns is activity protected by the Act. E.g., *Talsol Corp.*, 317 NLRB 290, 315-317 (1995), enfd. 155 F.3d 785 (6th Cir. 1998).

20 That the Respondent knew of the concerted nature of the activity is shown by Superintendent Williams' testimony. Williams admitted that at the August 5, D-15 meeting, when Soderman spoke about the scaffolding, he knew that Soderman was voicing a group concern. Williams also acknowledged that Soderman was part of a group of employees who were concerned about Soderman's job tenure because he had voiced safety concerns. Williams testified that he "wasn't going to address [Soderman's job security] in front of a group of people" (Tr. 192).

25 The Respondent contends that the issue of the overloading of the scaffolding was mentioned only at the August 5, D-15 meeting, and was immediately resolved. In support of this contention the Respondent presented Alfred Schetlizki as a witness. Schetlizki is a member of the Laborers union and was the jobsite steward until his resignation on August 12 or 13. Schetlizki testified that he was unaware that there was a safety issue concerning the weight capacity of the scaffold until August 5, when he passed Superintendent Williams as Williams was going to inspect the scaffold.

35 I find Schetlizki's testimony to be of little probative value. He readily admitted that he did not attend the D-15 meetings on a daily basis, and was not present at the August 5 meeting. I find nothing suspect by his lack of knowledge of the safety issue. Soderman, and other employees, addressed this issue before the highest levels of the Respondent's onsite management. Soderman also raised it with a Nuclear Management Company safety representative. I see nothing in the record to suggest that Soderman was somehow remiss, or that his testimony is unbelievable, because Schetlizki was unaware of the issue. To the extent that the Respondent contends otherwise I reject that contention.

45 The final element of the General Counsel's case goes to the Respondent's motivation for laying off and failing to recall or rehire Soderman. Whenever an employer's motivation for an adverse action is in issue, it must be analyzed using the methodology set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Mgmt. Corp.*, 462 U. S. 393 (1983). Under *Wright Line*, the General Counsel must introduce persuasive evidence that animus toward the protected activity was a substantial or motivating factor in the employer's decision. Once that has been done, the burden of persuasion shifts to the employer to demonstrate that it would have taken the same action even in the absence of protected activity on the part of the employee. *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996). Direct evidence of unlawful motivation is seldom available

and it may be established by circumstantial evidence and the inferences drawn from that evidence. E.g., *Abbey Transportation Service*, 284 NLRB 689, 701 (1987); *FPC Molding, Inc. v. NLRB*, 64 F.3d 935, 942 (4th Cir. 1994); *Shattuck Denn Mining Corp.*, 362 F.2d 466, 470 (9th Cir. 1966).

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As set forth above counsel for the General Counsel has established that Soderman was engaged in protected concerted activity and that the Respondent had knowledge of that activity. There is also substantial evidence that the Respondent's decision to layoff and not rehire Soderman was motivated by his protected concerted activity. On several occasions Respondent's supervisors exhibited animus towards Soderman protected concerted activities. Superintendent Rogers suggested to no one in particular that Soderman's mouth should be duct taped shut after a D-15 meeting where Soderman spoke about the safety of the scaffolding. Superintendent Williams asked Soderman's coworker, Rick Forward, to talk with Soderman about toning down his comments. Rogers never testified and Williams did not repudiate, or address, his comment when he testified.

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Union Business Agent Coward's credible testimony provides direct evidence of the Respondent's motivation. Coward testified that Brouwer admitted that the reason for Soderman's layoff was because Soderman was "dragging the safety meetings out" and that Soderman was "driving him nuts." Brouwer specifically rejected Soderman for rehire commenting that "the wound was too fresh."

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Based on all of the foregoing, I find that the General Counsel has met his burden under *Wright Line* of establishing that Soderman's protected concerted activity was a motivating factor in his layoff and the Respondent's refusal to recall or rehire him. Once the unlawful motivation is established, the burden of persuasion shifts to the Respondent to prove its affirmative defense that the alleged unlawful conduct would have occurred even in absence of the protected activity. The Respondent "not only must separate its tainted motivation here from any legitimate motivation, but it must persuade that its legitimate motivation outweighs its unlawful motivation so much that the Company would have [taken the same action] even in the absence of [the protected activity]." *Formosa Plastics*, 320 NLRB 631, 648 (1996).

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The Respondent claims that Soderman and Pellitier were replaced because of Williams' belief that they were "not good performers." As previously noted Pellitier was recalled within a week of lay off and continued to work for Williams through December 2004. Specifically regarding Soderman, Williams said that he told Brouwer that he did not want Soderman back because "I was not impressed with his production. I explained how he would wander" (Tr. 190). Counsel for the General Counsel correctly points out the discrepancy between Williams' testimony and Brouwer's regarding the methodology used by the Respondent to determine which employees are laid off. Brouwer stated that "when we do a reduction in force, we keep the people that have the best skill set that we need for this specific job. That's how we look at who stays and who goes" (Tr. 160). There is no evidence that this methodology was employed by Williams in selecting Soderman for a reduction in force layoff. Indeed, the only evidence regarding how Soderman actually performed his duties was provided by Schabes. Soderman was assigned as Schabes' helper before being assigned to the fabrication shop. Schabes credibly testified that Soderman did "everything I needed him to do" (Tr. 206). To the extent that the Respondent contends that Soderman was laid off and not reemployed because of a lack of skill, I find no evidence to support that contention.

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The Respondent does offer three conduct related incidents as evidence that Soderman would have been permanently laid off notwithstanding his protected concerted activity. Two of

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these incidents involve Soderman being away from his work area and the third involves an accident.

5 The first incident occurred on July 12 when an individual named Dan (otherwise not identified) called Williams to report seeing Soderman talking to “plant people” in the break room, but not during break time. Under questioning by the counsel for the General Counsel Williams admitted that there was a problem with Nuclear Management Company personnel (i.e., plant people) bothering craft personnel, like Soderman. Williams acknowledged that he did not know how long Soderman was in the break room, or for what purpose. It is clear that Williams did
10 nothing regarding this incident, other than noting it in his daily work dairy. Soderman denied any knowledge of the alleged incident. The Board and the courts have consistently recognized that an employer’s decision to take adverse action against an employee without conducting a reasonable investigation into the reported misconduct, including allowing the employee to defend himself, supports a finding that the employee’s alleged misconduct is not the actual
15 basis for the adverse action. E.g., *Jet Star, Inc. v. NLRB*, 209 F.3d 671, 677 (7th Cir. 2000); *Detroit Newspapers*, 342 NLRB No. 125, slip op. at 17 (2004).

20 The next incident occurred on July 14 when Williams saw Soderman on the roof. When asked why he was on the roof Soderman replied that he was waiting for duct work. Williams admitted that there was another person with Soderman, but whose name was omitted from Williams entry in his daily work dairy. After having his recollection refreshed by counsel for the General Counsel Williams agreed that the other individual was Schabes, the welder to whom Soderman was assigned as a helper. The uncontradicted testimony of Soderman and Schabes establishes that they went to the roof to cool off while they waited for equipment to be brought to
25 their work area. Their action was consistent with Williams prior directive to take breaks as needed from the turbine building. Williams issued that directive over his concern about heat exhaustion because the temperature in the turbine building exceeded 110 degrees. Moreover, Soderman testified, without contradiction, that Schabes gave Williams that explanation.

30 The third incident involves Soderman’s operation of an extending boom man-lift on July 27. This is a machine with a basket at the end of an extending boom that is used to lift material and/or people. While operating the machine Soderman accidentally hit an object and bent the handrail on the basket. Soderman testified, again without contradiction, that he immediately informed Williams who said “no big deal” (Tr. 203). When asked by counsel for the General
35 Counsel if he wrote up an accident report, Williams said that he didn’t recall. When pressed by counsel for the General Counsel to admit that the reason there was no accident report was because this was not a serious accident Williams replied “I think it was” (Tr. 197). Williams’ inaction belies his statement. No one was injured, there is no damage estimate, and there is no evidence that the handrail was repaired, there was no written accident report, no investigation,
40 no statement from the one witness, and Soderman was never issued any form of reprimand. In sum, the Respondent treated the incident befittingly, as nothing more than a minor, accidental, “basket bender.”

45 Considering all the forgoing, I find the Respondent’s asserted reason for laying off and refusing to recall or rehire Soderman is a pretext. ‘A finding of pretext necessarily means that the reasons advanced by the employer either did not exist or were not in fact relied upon, thereby leaving intact the inference of wrongful motive established by the General Counsel.’ *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enf’d. 705 F.2d 799 (6th Cir. 1982).

50 Accordingly, I conclude that the Respondent has not established that it would have laid off and refused to recall or rehire Soderman in the absence of his protected concerted activity and that the Respondent thereby violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Atlantic Union Resources, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent violated Section 8(a)(1) of the Act by laying off and refusing to recall or rehire Eric Soderman because he engaged in concerted activity protected by Section 7 of the Act.

3. The unfair labor practice found above is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily laid off and refused to recall or rehire Soderman, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The General Counsel requests that the Respondent be required to post and mail appropriate notices [GC Exh. 1(c) at 3]. This request, presumably, is based on the fact that the Respondent apparently only employs employees on a temporary, project-by-project basis. Thus, the employees who were employed by the Respondent at the Palisades Nuclear Plant jobsite (the facility), during the relevant period may not be employed by the Respondent at the facility during the notice posting period. Accordingly, I shall recommend that the Respondent mail the notice to all employees, who were employed by the Respondent at the facility, since the date the unfair labor practice occurred, except for Respondent's employees who are employed at the facility as of the date of the notice posting. See, *Bergensons Property Services*, 338 NLRB 883, 883 (2003).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Atlantic Union Resources, Inc., Norfolk, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off and refusing to recall or rehire, or otherwise taking adverse action against employees, because they have engaged in concerted activity protected by Section 7 of the Act.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Eric Soderman full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Eric Soderman whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful layoff and refusal to recall or rehire, and within 3 days thereafter notify the Eric Soderman in writing that this has been done and that the unlawful layoff and refusal to recall or rehire will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at the Palisades Nuclear Plant in Covert, Michigan copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to the Respondent's employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or is otherwise unable to post a notice at the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to the last known address of every employee employed by the Respondent at the Palisades Nuclear Plant in Covert, Michigan, at any time since August 26, 2004, and provide a copy of the mailing to the Regional Director for Region 7.

(f) Within 14 days after service by the Region, duplicate and mail signed copies of the attached notice, at its own expense, to the last known address of each former employee employed by the Respondent at the Palisades Nuclear Plant in Covert, Michigan, at any time since August 26, 2004, and provide a copy of the mailing to the Regional Director for Region 7.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

5 Dated, Washington, D.C. May 31, 2005.

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John T. Clark
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT lay off and refuse to recall or rehire, or otherwise take adverse action against any of you for engaging in concerted activity protected by Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Eric Soderman full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Eric Soderman whole for any loss of earnings and other benefits resulting from his unlawful layoff and refusal to recall or rehire, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful layoff and refusal to recall or rehire of Eric Soderman, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the layoff and refusal to recall or rehire will not be used against him in any way.

ATLANTIC UNION RESOURCES, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

477 Michigan Avenue, Federal Building, Room 300
Detroit, Michigan 48226-2569
Hours: 8:15 a.m. to 4:45 p.m.
313-226-3200.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 313-226-3244.